

Decision **DRAFT DECISION OF ALJ PRESTIDGE** (Mailed 1/12/2006)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

The Application of Empire One  
Telecommunications, Inc. for Approval of a  
Merger Agreement and Authority to Transfer  
Ownership.

Application 05-04-028  
(Filed April 28, 2005)

**OPINION DISMISSING APPLICATION FOR  
FAILURE TO COMPLETE THE APPLICATION**

**I. Summary**

This decision dismisses the application of Empire One Telecommunications, Inc. (Empire 1), Fonix Corporation (Fonix), and TOE Acquisition Corporation (TOE) (together, Applicants) based on Applicants' failure to complete the application.

**II. Discussion**

On April 28, 2005, Applicants filed an application for Commission approval of a merger agreement dated November 19, 2004. Under the merger agreement, TOE, a wholly owned subsidiary of Fonix, would merge with Empire 1. Empire 1 would survive the merger and would become a wholly owned first-tier subsidiary of Fonix. Empire 1 currently holds a Certificate of Public Convenience and Necessity (CPCN) authorizing the provision of resold telecommunications services in this state.

Upon review of the application, the assigned Administrative Law Judge (ALJ) determined that additional information was needed to process the

application. The assigned ALJ therefore directed Applicants in writing to submit a supplemental filing that would include certifications, additional information regarding the ongoing management of Empire 1 after the merger, and additional financial documentation by no later than September 1, 2005.

Applicants did not respond to the assigned ALJ's letter and failed to make the required supplemental filing or to request an extension of time within which to do so by September 1, 2005.

A representative of Empire 1 subsequently contacted the assigned ALJ regarding the status of this proceeding. The assigned ALJ advised Empire 1 that if Applicants wished to complete their application, they could request an extension of time within which to make the supplemental filing and should provide an explanation of their failure to meet the September 1, 2005 deadline.

To date, Applicants have not made the required supplemental filing and have not requested an extension of time within which to do so.

This application cannot be left open indefinitely. Applicants have been given more than a reasonable opportunity to complete their application for approval of the merger agreement and authority to transfer ownership. Therefore, the application shall be dismissed based on Applicants' failure to complete the application. This order will be made effective immediately in order to clear this application from the Commission's list of active proceedings.

### **III. Comments on Draft Decision**

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. No comments were received.

**IV. Categorization and Need for Hearings**

In Resolution ALJ 176-3152 dated May 5, 2005, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Applicants have failed to complete this application, despite being given more than a reasonable opportunity to do so. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

**V. Assignment of Proceeding**

Dian M. Grueneich is the Assigned Commissioner and Myra J. Prestidge is the assigned ALJ in this proceeding.

**Findings of Fact**

1. Applicants failed to comply with the assigned ALJ's September 15, 2005 ruling, which directed Applicants to file information regarding certifications, the ongoing management of Empire 1 after the merger, and additional financial documentation by no later than September 1, 2005, within 30 days in order to avoid dismissal of the application.
2. Applicants have failed to request an extension of time within which to comply with the assigned ALJ's September 15, 2005 ruling.
3. The application cannot be left open indefinitely.
4. Applicants have failed to complete the application, despite being given more than a reasonable opportunity to do so.

**Conclusions of Law**

1. The application should be dismissed based on Applicants' failure to complete the application.

2. This order should be made effective immediately in order to clear this application from the Commission's list of active proceedings.

**O R D E R**

**IT IS ORDERED** that:

1. Application (A.) 05-04-028 is dismissed.
2. A.05-04-028 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.